

# **Exhibit 1**

To the Zakarin Reply Declaration  
in further support of  
Extreme's motion for Summary Judgment

**Redacted**  
**(UnRedacted Copy is Filed Under Seal)**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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TWELVE SIXTY LLC, ARON  
MARDEROSIAN and ROBERT  
MARDEROSIAN,

Plaintiffs,

-against-

Civil Action No.:  
1:17-CV-01479-PAC

EXTREME MUSIC LIBRARY LIMITED,  
a division of Sony/ATV Music  
Publishing; EXTREME MUSIC  
LIMITED; VIACOM INTERNATIONAL  
INC., NEW CREATIVE MIX INC.,  
HYPE PRODUCTION MUSIC,  
Defendants.

-----x

November 1, 2018  
1:00 p.m.

Deposition of ROBERT H. KOHN, taken by  
Defendants, pursuant to Notice, held at the law  
offices of Pryor Cashman, LLP, 7 Times Square, New  
York, New York, before Judith Castore, a Certified  
Livenote Reporter and Notary Public of the State of  
New York.

A P P E A R A N C E S  
ON BEHALF OF PLAINTIFFS

MARDEROSIAN & COHEN, PC  
1260 Fulton Street  
Fresno, California 93721  
559-441-7991

BY: MICK MARDEROSIAN, ESQ.  
mick@mcc-legal.com  
HEATHER COHEN, ESQ.

ON BEHALF OF DEFENDANTS - Extreme Music Library  
Limited, Extreme Music Limited

PRYOR CASHMAN, LLP  
7 Times Square  
New York, New York 10036  
212-421-4100

BY: DONALD S. ZAKARIN, ESQ.  
dzakarin@pryorcashman.com  
ROSS M. BAGLEY, ESQ.  
rbagley@pryorcashman.com  
YEVGENIA S. KLEINER, ESQ.  
ykleiner@pryorcashman.com

ON BEHALF OF DEFENDANTS - Viacom International,  
Inc., New Creative Mix, Inc. and Hype  
Production Music

LOEB & LOEB  
345 Park Avenue  
New York, New York 10154  
212-407-4000

BY: WOOK J. HWANG, ESQ.  
whwang@loeb.com  
ERIN SMITH DENNIS, ESQ.  
edennis@loeb.com

ALSO PRESENT:

DAVID J. PRZYGODA, ESQ., Litigation  
Counsel, Sony Corporation of America

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KOHN

commercial and the Starbucks commercial  
in there. I might have found it. I  
might have listened to it, but I don't  
remember.

But I poked around it to see  
what was there but I did not do what  
you had asked me. And I did not do a  
calculations as to how much were this  
kind and how much were that kind.

Q Turn to Exhibit B of your  
report, if you would.

(Whereupon, a brief recess  
was taken.)

Q Okay.  
I think when we broke, I had  
asked you to look at your Exhibit B --

A Yes.  
Q -- to your report. Do you  
recall? Pull it out.

A Okay. Exhibit B.  
Q And you say these are unique  
TuneSat detections?

A That's what the title of it  
is.

1

KOHN

2

Q Are they unique?

3

A Yes. That's my understanding  
4 of what they are. I didn't produce  
5 these.

6

Q You didn't --

7

A No.

8

Q -- create this document?

9

A No.

10

Q So somebody else created it,  
11 and told you what it was?

12

A Well, I was given it by  
13 attorneys; and I understand that Karen  
14 Rodriguez had prepared it.

15

Q Okay.

16

And the total number of  
17 detections when you add them up are  
18 about 21, nearly 22,000, correct?  
19 You've got 6,848 and 15,093.

20

A Fifteen plus six, yeah, about  
21 22,000, something like that.

22

Q I said about 22,000 or close  
23 to 22,000.

24

And you multiplied \$200  
25 against every one of these detections?

1 KOHN

2 A Yeah.

3 Q But you don't know if these  
4 are unique detections, correct?

5 A Well, it says unique  
6 detections. And I understood them to  
7 be unique detections. I had previously  
8 given a back of the envelope done in my  
9 own way, way back in February when I  
10 started working on the case and using  
11 data that went all the way back to 2013  
12 or something like that. And -- like I  
13 said. So when I saw these numbers I  
14 said it's in the realm of -- again, I  
15 did back of the envelope and I just  
16 took these as what it was.

17 Q But now they've gone up by  
18 some nearly 7,000 from your number?

19 A Apparently.

20 Q And you don't know whether  
21 they are or not unique detections?

22 A I'm not the one who generated  
23 this. So I don't know whether they're  
24 unique in the way that you and I have  
25 been talking about my understanding of

1 KOHN

2 what unique is.

3 Q Do you know how many of these  
4 detections -- I assume you're going to  
5 know the answer -- are Viacom  
6 detections, detections of broadcasts on  
7 Viacom networks?

8 A I could do that.

9 Q You could pull it out from  
10 the list?

11 A Right. Like MTV Classic is  
12 MTV2. MTV -- we can probably pull out  
13 and add the numbers up.

14 Q So we can add up what the  
15 total number of MTV detections are?

16 MR. MARDEROSIAN: Well, he  
17 said he did not prepare this.

18 MR. ZAKARIN: I understand.

19 MR. MARDEROSIAN: And I think  
20 that's a question for Karen  
21 Rodriguez.

22 MR. ZAKARIN: Well, the  
23 problem is it's attached to his  
24 report.

25 MR. MARDEROSIAN: I think

1 KOHN

2 Anyway, let's continue on.

3 Q In terms of -- so we could  
4 figure out which are Viacom channels  
5 and therefore which are Viacom  
6 detections, correct?

7 A Yes, if we knew what Viacom's  
8 channels are.

9 Q For which you applied \$200  
10 for each and every one of the  
11 detections, correct?

12 A Well, are you just saying the  
13 same thing for each -- yeah, I used the  
14 total numbers here and multiplied it by  
15 \$200.

16 Q And in terms of these  
17 detections, do you know how many are  
18 not works that were delivered to Viacom  
19 Extreme but are owned by others  
20 including the plaintiffs?

21 MR. MARDEROSIAN: Objection.  
22 Vague.

23 Q You know that the plaintiffs  
24 self-published works, right?

25 A Yes.



1 KOHN

2 Q Do you know how many of these  
3 detections are of the plaintiffs'  
4 self-published works?

5 A I think -- I didn't generate  
6 this. So I don't have the underlying  
7 data that was used to generate this. I  
8 wouldn't be able to answer any of those  
9 questions.

10 Q You with agree with me though  
11 that there's no reason to charge or  
12 make a claim against Extreme or Viacom  
13 for \$200 per each of the plaintiffs'  
14 own works?

15 A No.

16 Q Okay.

17 A Absolutely not.

18 Q So if the plaintiffs'  
19 self-published works or works published  
20 by third parties are among these  
21 detections --

22 A Right.

23 Q -- they have --

24 MR. MARDEROSIAN: Hold on.

25 Let him finish the question

1 Kohn

2 because I want to object to it  
3 before you agree to it.

4 Q -- they have to get backed  
5 out?

6 MR. MARDEROSIAN: I'm going  
7 to object.

8 It's an incomplete  
9 hypothetical, and it doesn't  
10 include the fact that there's  
11 evidence that Extreme is taking  
12 Aron and Robert's own publishing  
13 for Lonely Orchard and Brothers  
14 Heathen.

15 Q You can answer my question as  
16 opposed to the rhetoric there.

17 A My understanding is that  
18 these were unique detections of  
19 music -- musical work, sound recordings  
20 that were created by Aron and Rob and  
21 delivered under the contract.

22 Q But in fact you don't know  
23 whether these were, in fact, delivered  
24 or are self-published?

25 MR. MARDEROSIAN: I'm just

1 Kohn

2 going to object.

3 It's an incomplete  
4 hypothetical and vague.

5 Q You can answer.

6 MR. MARDEROSIAN: And doesn't  
7 include the issue over whether or  
8 not Extreme is taking the  
9 plaintiffs' published --  
10 self-published songs.

11 A And I don't know whether this  
12 is an underrepresentation and doesn't  
13 include all of their songs that were  
14 delivered and used.

15 Q So you don't know very much  
16 at all about this document?

17 A That's right.

18 Q Essentially, what you did is  
19 you took the number of detections  
20 without knowing what they are and  
21 multiplied each one by 200?

22 A And that wasn't the essential  
23 part of my report. The essential part  
24 of my report was coming up with the  
25 \$200 figure. If this wasn't included,

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KOHN

2

it wouldn't have mattered because

3

whichever the true number is would be

4

multiplied by \$200. If it was --

5

instead of 21,000, if it was 16,000, if

6

it was 30,000, whatever that number is.

7

And I'm sure enough good minds can get

8

together and figure out using the

9

TuneSat data what the proper number is.

10

Q We'll come to the 200 in due

11

course.

12

In any event, if I understand

13

you correctly you -- it's your view

14

that the 200 is the right number for --

15

for these -- for all of those

16

detections, that's your opinion?

17

MR. MARDEROSIAN: Right

18

number for what?

19

Q The right number for the sync

20

fee for each of these 200 detections

21

that you have opined?

22

A My report says what it says

23

about the \$200 number. We can turn to

24

it. I don't want to say anything

25

that's inconsistent and be --

1 KOHN

2 Q Well, let's look at Page 86  
3 which is where I think come up with  
4 this.

5 A Thank you. Thank you.

6 Q Okay.

7 A That's helpful.

8 Q I think this is where you  
9 explain how you came up with your \$200.

10 A I'm there.

11 Q Okay.

12 And if I -- I want to  
13 characterize this correctly, what you  
14 did was you looked at the license of  
15 their works to CBS for a promo use for  
16 \$████, correct?

17 A Yes.

18 Q And you compared that to an  
19 in-program license use of one of their  
20 own works, meaning Rob and Aron, for  
21 \$300. And you then -- and you  
22 reference to up to 20,000 for works  
23 they own control. You mentioned that.  
24 And then you conclude, I think you just  
25 say I therefore applied the sum of 200

1 KOHN

2 to each of these. So your view is, at  
3 the very least, for the CBS promo use  
4 200 would be the right number?

5 A 200 would be the right number  
6 to use across the board for the  
7 detections -- unique detections that  
8 were discovered during the period from  
9 mid-2014 to the present.

10 Q But one of those is you look  
11 at CBS promo use and you figure they  
12 charge [REDACTED]. I think 200 is the right  
13 one?

14 A Well, there might have been  
15 an in-program use -- well, I call it an  
16 in-program use -- that might have been  
17 worth \$20,000 or worth more. But I  
18 picked 200 as an overall way of just  
19 going across the board to simplify it.

20 Q Could you look at Exhibit A  
21 of your report for a second. And we'll  
22 come back to that.

23 A Yes.

24 Q Exhibit A, this you have done  
25 all by yourself?

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KOHN

the NY9 and got \$200 for the promo for  
it.

Q Is the \$10,000 that you put  
in there, is that also in your Exhibit  
B? Is it the same use as Exhibit B?

A I don't know.

Q So you could have a  
duplication there?

A I might have a duplication.

Q You don't know that?

A Neither do you. I don't know  
whether I do.

Q Not my burden.

Did you -- by the way on your  
Exhibit B, did you back out what was  
actually paid on any of those licenses?

A I was not asked to do that.

Q Okay.

So you were just asked to  
come up with a gross number and put  
that forward as the damage claim?

A I was asked to come up with  
the \$200 amount. All right. I was  
given the unique numbers. I did the

1 KOHN

2 multiplication. It was towards the end  
3 of this. I didn't have the information  
4 to back it out. And I wasn't provided  
5 to -- but it. But it could be backed  
6 out by somebody else.

7 Q Lots of things could be done,  
8 but it wasn't done. So this is put  
9 forth -- you're aware that you've put  
10 this forth as a damage claim, \$200  
11 times 20 -- almost 22,000 detections?

12 A Well, I also said to you that  
13 I'm not the one who came up with the  
14 22,000 detections. All right?

15 Q Is it your testimony --

16 A Somebody -- you know,  
17 somebody else came up with that number  
18 and I came up with the \$200. I made a  
19 multiplication of the two numbers. One  
20 number I came up with. Another number  
21 somebody else came up with, and that's  
22 what I put in here.

23 Q At the bottom of -- here,  
24 based on my calculations, Page 86, Aron  
25 and Rob share of these broadcast



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KOHN

MR. MARDEROSIAN: That's  
argumentative. Assumes facts not  
in evidence and mischaracterizes  
the evidence.

MR. ZAKARIN: Except that  
it's true.

A You'll have to --

MR. MARDEROSIAN: It's not  
true.

A Well, the number is either  
going to be 16,000 or it's going to be  
21,000 or something in between. You  
know, there's a correct number.

Q How many of them -- of those  
16,000 are Viacom, if you know?

A I didn't do that filter.

Q Because we didn't add up --  
and this came from Karen Rodriguez  
anyway, right?

A Yes.

Q So we'll skip that.  
You're aware of the BMI --  
excuse me, ASCAP consent decrees,  
aren't you?

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KOHN

2

A Generally. I haven't read  
3 them in years.

4

Q Sadly, I have much more  
5 familiarity I think.

6

But you're aware generally  
7 that they preclude publishers and  
8 writers from granting ASCAP and BMI  
9 exclusive public performance rights,  
10 aren't you?

11

A So what?

12

Q So what? I didn't ask you so  
13 what. I asked you whether you're aware  
14 of that?

15

A They -- it doesn't preclude  
16 the music publishers from granting it.

17

Q It actually requires that  
18 music publishers can't grant exclusive  
19 rights to ASCAP and BMI. They have to  
20 be --

21

A That's right. That's right.  
22 They have to reserve the right. It's a  
23 non-exclusive basis so they have to  
24 reserve the right to issue direct  
25 blanket performance licenses. I saw

1

KOHN

2

that in Barry's report.

3

Q You knew it beforehand,

4

didn't you?

5

A Yes.

6

Q And broadcasters are also

7

fully aware of it, aren't they?

8

A Yes.

9

Q And you're aware, aren't you,

10

that broadcasters -- a number of

11

broadcasters will demand direct

12

performance licenses?

13

A Yes, they will.

14

Q Okay.

15

A When they can get it.

16

Q You can say no, but you can

17

also lose the license if you say no;

18

isn't that right?

19

A That's correct.

20

Q Okay.

21

A Sometimes they need to have

22

the music they need to have and --

23

Q Well, need to have the music

24

they need to have is more frequent with

25

popular music library -- popular music

1

KOHN

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publishers rather than production music

3

libraries, wouldn't you agree?

4

A I wouldn't necessarily put it

5

that way. But I think the way you've

6

put it is that production music

7

libraries have been more amenable to

8

granting direct public performance

9

licenses than commercial -- what your

10

client called -- other kinds of music

11

publishers, traditional music

12

publishers.

13

Q Traditional music publishers

14

have evergreens and must-haves as

15

opposed to more generic music?

16

A Right. Because -- because

17

production music libraries have this --

18

it's not because the music is any

19

worse.

20

Q No, nobody is saying quality.

21

A But they also have the

22

ability to grant the sound recording at

23

the same time, and that gives them

24

their special advantage.

25

Q But they typically don't have

1

KOHN

2

must-have works or evergreen works.

3

They have genres that are used by

4

broadcasters.

5

A Sure.

6

Q And popular music is just --

7

costs much more and you have much more,

8

if you excuse, me F-U power when you

9

have popular music?

10

A Sure.

11

Q I didn't think that it was

12

controversial.

13

A I don't think so either. But

14

you can't -- you can't jump to the

15

conclusion just because the consent

16

decrees say that publishers can issue

17

direct licenses, that a publisher will

18

issue a direct license and then not

19

allocate the money coming back

20

properly.

21

Q But I'm not dealing with

22

allocation. I'm only dealing with,

23

right now --

24

A But the way, one of your

25

experts had used -- I think two of your

1

KOHNN

2

experts had quoted a consent decree in

3

connection with their argue. That it

4

was okay not to use a usage basis in

5

their allocation. Yes, they did. And

6

I thought that was -- that was

7

incorrect.

8

Q I don't think that they say

9

that, but they say what they say. So

10

we don't have to debate it between you

11

and I. I think the simple point that

12

we're just trying to make is that the

13

consent decrees make it impossible for

14

ASCAP and BMI at least to have

15

exclusive licensing rights and

16

performance rights. They can't have it

17

exclusively.

18

A Yes.

19

Q And broadcasters know that

20

and --

21

A We've already been through

22

this, right?

23

Q So we agree.

24

It's not your contention, is

25

it, I just want to make sure, that if a

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KOHN

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broadcaster, CNN, I think there are a

3

couple of others, came to Extreme and

4

said we want to license, we want a

5

direct performance license. It's not

6

your contention that Extreme should

7

have rejected that and potentially lost

8

the license, is it?

9

MR. MARDEROSIAN: Objection.

10

Incomplete hypothetical.

11

Calls for speculation.

12

Q Let me rephrase it. Let me

13

rephrase it.

14

A Okay.

15

Q It's not your contention, is

16

it, that if a broadcaster, whether it

17

was CNN or another broadcaster said

18

we're willing to enter into a blanket

19

license with you but only if you grant

20

us also a direct performance right,

21

that Extreme should have simply said

22

no, we won't do it?

23

A If Extreme is not prepared to

24

do the work necessary to comply with

25

its contracts with songwriters to

1

KOHN

2

allocate the income on the blanket

3

basis on a usage basis, then it should

4

reject it.

5

Q Okay. I understand your view

6

on how a blanket should be allocated.

7

So we may disagree, but that's your

8

condition that they can do it but only

9

if they allocate on a usage basis; is

10

that your position?

11

A Yes.

12

Q Okay.

13

And what about on a -- I call

14

it a needle drop. You call it what, a

15

--

16

A I think a needle --

17

Q -- either a source or a

18

direct license?

19

A I was saying that either

20

there's a -- yeah, there's either a

21

blanket agreement or there's discrete

22

agreements. We'll call it --

23

Q I think discrete and source

24

are used, but I think in the industry

25

they primarily call it a needle drop.



1 KOHN

2 Be that as it may, if a  
3 broadcaster comes, and it could be CNN,  
4 it could be Hearst, it could be  
5 anybody, and says I'll license X, Y and  
6 Z works from you but you've got to  
7 grant me the public performance grant,  
8 as well. It's not your contention that  
9 they should have, meaning Extreme  
10 should have rejected that demand?

11 A Sorry. You're going to have  
12 to repeat the question because I didn't  
13 follow it.

14 Q I'm talking about a needle  
15 drop and discreet license.

16 A Right.

17 Q For individual works.

18 A Right.

19 Q A broadcaster comes and says  
20 I want to license X, Y and Z songs for  
21 sync usage.

22 A Let's say three -- you said  
23 three songs.

24 Q It could be ten songs. It  
25 doesn't matter.

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KOHN

2

A Okay.

3

4

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Q I want to license these ten songs, and I want to grant the public performance rights along with that grant. Okay? It's not your contention, is it, that Extreme should have or was obligated to reject the license request?

10

11

12

13

A It has an obligation to each of the songwriters, as we've discussed, to allocate the income if it's done on a blanket basis.

14

15

16

Q We're not talking about a blanket. We're talking about a discreet --

17

18

A So let's talk about one song. Don't say three songs. Say one song.

19

20

21

22

Q Well, each one gets its own value in the license, in other words I'll license it for 300, this one for 400, this one -- whatever I get.

23

24

25

A Okay.

So it's basically -- it's

four or five discreet licenses and one

1 KOHN

2 agreement that covers all five sync  
3 licenses?

4 Q There are plenty of those.  
5 You've seen that, haven't you?

6 A And a public performance  
7 license goes along with each of them.  
8 Sure, it's done -- theatrical licenses  
9 were done in precisely that way.

10 Q But for television that's  
11 what a broadcaster demands and the  
12 choice is you either do it or -- a  
13 broadcaster does it as well and they  
14 come to you with your choices, you  
15 either grant the license or test  
16 whether they'll go someplace else?

17 A Fair enough, yes.

18 Q You're not suggesting that  
19 Extreme was obligated to reject any  
20 direct license demands by a  
21 broadcaster?

22 A Well, if you're going to --

23 MR. MARDEROSIAN: I'm just  
24 going to object again.

25 It's an incomplete

1 KOHN

2 hypothetical and vague.

3 A I'm not going to get -- so,  
4 you know, you'll take my answer and  
5 take it out of context. Because we  
6 just had a colloquy here among several  
7 things.

8 So to state the complete  
9 hypothetical, and that is, a  
10 broadcaster goes to a copyright owner  
11 and wants to have a sync license  
12 coupled with a direct public  
13 performance license for a particular  
14 song and recording with that song,  
15 right?

16 Q Comes to the production music  
17 library, yes.

18 A Right. And let's say there's  
19 one or two songwriters who on the back  
20 end will be allocated their, let's say  
21 it's 50 percent of the license fee.

22 Q Um-hum.

23 A I don't see any issue on the  
24 allocation side. We know what the  
25 usage is. It's going to be -- the

1

KOHN

2

contract is going to say you're allowed

3

to use it in one episode or ten

4

episodes, or you can use it in as many

5

episodes as you want during the year,

6

you could do whatever basis it is.

7

Q It's not a blanket. It's not

8

a blanket.

9

A Right. It's a discreet

10

license.

11

Q I agree.

12

A Of course they have -- the

13

copyright owner has the right to do

14

that.

15

Q Okay. I just wanted to make

16

sure.

17

Turn again, if you would --

18

first of all, turn to Page 14 of your

19

opinion again, if you would.

20

This is the second to last

21

bullet point on 14. We're referring

22

really to your Exhibit A again, okay?

23

And it says with respect to a fair and

24

reasonable market value for the body of

25

the sync licenses as negotiated by

1 Kohn

2 speaking it will go slower.

3 MR. MARDEROSIAN: If you want  
4 to keep asking the types of  
5 questions you're asking, it's  
6 going to go real slow.

7 Q Okay. That's fine. Middle  
8 paragraph of Page 44. As Mr. Emanuel  
9 testified, the AETN prefix was used as  
10 a means to split Extreme's publisher  
11 share of that income with the A&E  
12 network. This has no benefit to the  
13 songwriters. Indeed, it has the  
14 potential to harm it. The potential  
15 confusion could cause performance  
16 royalties to be misdirected as  
17 additional registrations for the same  
18 songs could spawn unanticipated errors.

19 Let's work through that  
20 statement, Mr. Kohn. You're aware,  
21 aren't you, that A&E has a blanket  
22 license with BMI?

23 A Yes, we saw that earlier, I  
24 think.

25 Q When I showed you TNN but

1

KOHN

2

within that Exhibit I believe is A&E as  
3 well?

4

A Right.

5

Q And that was at Allison

6

Smith's deposition, right?

7

A Yes.

8

Q Okay.

9

And you understand, don't  
10 you, that under that blanket license  
11 the licensees pays a share of its  
12 revenues to the PROs regardless of how  
13 much or how little it uses works?

14

MR. MARDEROSIAN: Objection.

15

Incomplete hypothetical.

16

Vague and ambiguous.

17

Q You could answer.

18

A That AETN, as the licensee of  
19 BMI, right -- is that what you're  
20 talking about?

21

Q It's actually A&E is the

22

licensee of BMI.

23

A Okay. That's right.

24

Q Pays a blanket license fee?

25

A Yes.

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KOHN

Q And it's based on a percentage of its revenue, not based upon its usage of works?

A That's correct.

Q Now, if the licensee also receives back some performance income for the works that it uses, that reduces the effective cost of its blanket license, doesn't it?

A If the licensee --

MR. MARDEROSIAN: I'm just going to object. It's an incomplete hypothetical. Vague and overbroad.

A So repeat the question.

Q Sure.

If the licensee -- we'll deal with A&E.

A That's the broadcasting --

Q A&E is the blanket license. If it gets paid back some performance income for the works that it uses, because it has a share of the publisher's share of performance



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KOHN

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income, that reduces the effective cost

3

of its blanket license, doesn't it?

4

MR. MARDEROSIAN: That calls

5

for speculation and incomplete

6

hypothetical.

7

A It doesn't reduce the cost of

8

its blanket license. It reduces the

9

cost of its music because it's now

10

getting income.

11

Q It's getting income that it

12

can offset against the fees that it has

13

to pay to BMI?

14

MR. MARDEROSIAN: I'm just

15

going to object. It calls for

16

speculation.

17

A It can use to offset it,

18

yeah; but it doesn't reduce the cost of

19

the blanket license.

20

Q Right. The blanket

21

license -- if it gets -- if it gets --

22

if it pays \$10 on its blanket license

23

and gets \$5 back as its publisher share

24

of performance income, effectively the

25

ad cost of its blanket is \$5?

1 KOHN

2 MR. MARDEROSIAN: Calls for  
3 speculation. Incomplete  
4 hypothetical.

5 A It's going to find a new  
6 source of income. And if you wish to  
7 say that it offsets, it gets a new  
8 source of income from music, then you  
9 wish to say that it offsets its cost of  
10 music, sure. It offsets its cost of  
11 electricity.

12 Q Okay.

13 A Fine.

14 Q And you'd agree, wouldn't  
15 you, logically that A&E has an  
16 incentive to use the works in its  
17 programs that generate income for it?

18 MR. MARDEROSIAN: Calls for  
19 speculation. Incomplete  
20 hypothetical.

21 Q You could answer the  
22 question.

23 A The A&E network is not in  
24 business of being a music license.  
25 It's not in the business of generating

1

KOHN

2

money from music. Somebody found a

3

means by which it could reduce its

4

music costs. Right?

5

Q Somebody found a means to --

6

A Somebody found a means of

7

reducing its music costs by doing a

8

deal using its leverage, right? And

9

says, okay, if you give me half of your

10

publisher's share I'll go ahead and get

11

that license and use some of your stuff

12

as opposed to -- some of your music and

13

somebody else's music.

14

Q Correct.

15

A That's the way to put it.

16

It's just simply a logical --

17

Q I agree. It has incentive

18

because it's going to make some money

19

as opposed to just spending money.

20

It's incentivized to use the

21

works on which it makes money, right?

22

A There's --

23

MR. MARDEROSIAN: Objection.

24

Calls for speculation.

25

Incomplete hypothetical.

1 KOHN

2 A If all things being equal,  
3 but a lot of music use, as you know, is  
4 based upon creative decisions that  
5 people make. The A&E network can try  
6 to let its producers know that this  
7 music will help A&E, but the producer  
8 might say screw that, I'd rather use  
9 somebody else's music because of  
10 creative reasons. So you -- you can't  
11 just simply --

12 Q I didn't say that it's a  
13 guarantee that it will use it. I said  
14 it's incentivized to use music on which  
15 it will make money, right?

16 MR. MARDEROSIAN: Calls for  
17 speculation.

18 Incomplete hypothetical.

19 A All right. So go ahead.

20 Q So -- and Extreme was giving  
21 up part of its publisher's share of  
22 performance income in order to  
23 hopefully get A&E to use those works;  
24 isn't that right?

25 MR. MARDEROSIAN: Calls for

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KOHN

speculation. Incomplete  
hypothetical.

Creates a further motive.

Q There's a question  
outstanding.

You agree with me, don't you?

A I don't disagree with you.

Q I didn't think so.

So, in any event, that is a  
potential benefit to the writers, isn't  
it, that their works get used because  
Extreme is, in effect, subsidizing or  
hopefully in effect sharing by sharing  
its performance income to subsidize the  
possible use of their works?

MR. MARDEROSIAN: I'm going  
to object.

It assumes a fact not in  
evidence if they were actually  
being paid for those uses. And  
secondly it's an complete  
hypothetical.

A Okay.

I -- but I can see that now.

1 Kohn

2 I mean, what I was trying to do is  
3 contrast what the CEO is saying with  
4 his own COO. Because the COO  
5 originally explained that the AETN  
6 reference is actually an additional  
7 means of linking the songs to the  
8 authors for purpose of paying public  
9 performance income.

10 Now, I may have read that as  
11 saying paying performance -- for public  
12 performance income to the songwriters,  
13 which I thought was simply nonsense.  
14 And then I saw the CEO disagree with  
15 that. Because he was explaining it as  
16 a means to split Extreme's publisher  
17 share with somebody else and attract to  
18 account -- to account and track the use  
19 of it.

20 Q But you see now what we just  
21 walked through. There is, in fact, a  
22 benefit to the writers?

23 A Yes.

24 MR. MARDEROSIAN: Hold on,  
25 please.

1  
2 STATE OF \_\_\_\_\_ )  
3 ) : ss  
4 COUNTY OF \_\_\_\_\_ )  
5  
6

7 I, ROBERT H. KOHN, the witness  
8 herein, having read the foregoing  
9 testimony of the pages of this deposition,  
10 do hereby certify it to be a true and  
11 correct transcript, subject to the  
12 corrections, if any, shown on the attached  
13 page.  
14

15 \_\_\_\_\_  
16 ROBERT H. KOHN  
17  
18  
19

20 Sworn and subscribed to before me,  
21 this \_\_\_\_\_ day of \_\_\_\_\_, 2018.  
22

23 \_\_\_\_\_  
24 Notary Public  
25

C E R T I F I C A T I O N

STATE OF NEW YORK )

) ss.:

COUNTY OF NEW YORK )

I, JUDITH CASTORE, Shorthand Reporter  
and Notary Public within and for the State  
of New York, do hereby certify:

That ROBERT H. KOHN, the witness  
whose deposition is hereinbefore set  
forth, was duly sworn by me and that this  
transcript of such examination is a true  
record of the testimony given by such  
witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or marriage and that I am  
in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 8th day of November,  
2018.



JUDITH CASTORE